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JACK P FRIEDMAN SCHMEISER OLSEN & WATTS 3 LEAR JET LANE SUITE 201 LATHAM, NY 12110			FADOK, MARK A	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/845,542
Filing Date: April 30, 2001
Appellant(s): BREDO ET AL.

MAILED

DEC 02 2005

GROUP 3600

Jack P. Friedman
For Appellant

EXAMINER'S ANSWER

This examiner's answer vacates examiner's answer mailed 7/7/2005 as directed by the Board of Appeals "ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER" dated 11/10/2005. The following incorporates the corrections stipulated by the same correspondence received 11/10/2005.

This is in response to the appeal brief filed 4/18/2005 appealing from the Office action mailed 11/19/2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Claimed Subject Matter*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Acknowledgement of ClaimsAppealed*

The copy of the appealed claims contained in Appendix A to the brief is correct.

(8) Acknowledgement of the related Evidence Appendices

In regards to appendix B, there is no evidence entered by the examiner and relied upon by appellants in this appeal.

(9) Acknowledgement of the related Proceeding

In regards to Appendix C, there are no proceedings identified in the "Related appeals and interferences" section.

(10) Evidence Relied Upon

20020154157	Sherr et al	10-2002
6,018,571	Langlolis et al	1-2000

Help community, "Adding mouse right click functionality, website, dated 9/29/1999.

(11) Grounds of Rejections to be Reviewed

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-21 are not patentable under 35 U.S.C. 103(a) over Sherr et al. (US 20020154157) in view of Official Notice.

In response to claim 1, Sherr discloses a method of presenting a shopping summary associated with electronic commerce, comprising the acts of:

detecting a right click of a computer mouse on a web page (page 7, para 071);
and

Sherr teaches displaying an order page initiated by a right mouse click (page 7, para 071), but does not specifically mention showing a shopping summary in response to detecting the right click. It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Sherr, a shopping summary as claimed in the instant invention, because this would permit buyers of the system to use the right click option for any presentation of information that was considered important enough to command the use of the right click option. Offering this flexibility would increase the sale and use of the system and thus create increased revenue for the company by satisfying the needs of the customer.

In response to claim 2, Sherr teaches wherein the act of showing further comprises the act of accessing a second web page that includes the shopping summary (see response to claim 1, order page).

In response to claim 3, Sherr teaches wherein the act of showing further comprises the act of opening a web page overlay that includes the shopping summary (see response above and FIG 2, item 206).

In response to claim 4, Sherr discloses a method of presenting a shopping cart for on-line shopping, comprising the acts of:

detecting a right click of a computer mouse on an on-line shopping web page (see response to claim 1); and

showing a shopping cart responsive to detecting the right click of the computer mouse on the on-line shopping web page (see response to claim 1, and FIG 14).

In response to claim 5, Sherr teaches wherein the act of showing further comprises the act of accessing a second web page that includes the shopping cart (see response to claim one and FIG 14).

In response to claim 6, Sherr teaches wherein the act of showing further comprises the act of opening a web page overlay that includes the shopping cart. (see response to claim 1,3, and 5)

In response to claim 7, Sherr discloses a method of displaying a bidding summary for an on-line auction, comprising the acts of:

detecting a right click of a computer mouse on an on-line auction web page (see response to claim 1); and

Sherr teaches displaying an order page initiated by a right mouse click (page 7, para 071), but does not specifically mention showing a bidding summary in response to detecting the right click. It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Sherr, displaying bidding summaries as claimed in the instant application, because this would permit buyers of the system to use the right click option for any presentation of information that was considered important enough to command the use of the right click option. Offering this flexibility would increase the sale and use of the system and thus create increased revenue due to satisfying the needs of the customer.

In response to claim 8, Sherr teaches wherein the act of showing further comprises the act of accessing a second web page that includes the bidding summary (see response to claim 7, order page).

In response to claim 9, Sherr teaches wherein the act of showing further comprises the act of opening an overlay that includes the bidding summary (see response to claim 7 and FIG 2, item 206).

In response to claim 10, Sherr discloses a method of presenting a shopping summary for electronic commerce, comprising the acts of: detecting a right click of a computer mouse on a web page (page 7, para 071);

deriving a screen location from screen coordinates of the computer mouse (page 6, para 0067);

creating an overlay that includes a shopping summary (FIG 2, item 206); and showing the overlay upon the web page at the derived location (FIG 2, item 206).

In regards to claims 11-15, Sherr teaches displaying an order page initiated by a right mouse click (page 7, para 071), but does not specifically mention showing all the different summaries in response to detecting the right click. It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Sherr, displaying summaries as claimed in the instant invention, because this would permit buyers of the system to use the right click option for any presentation of information that was considered important enough to command the use of the right click option. Offering this flexibility would increase the sale and use of the system and thus create increased revenue by satisfying the needs of the customer.

In response to claim 15, Sherr discloses using the right click of a mouse to perform a limited programmed function such as entering an order page within a current webpage (see response to claims 1-14), but does not specifically mention that the right click is used to open and close an application such as a shopping summary. Turning programs on and off utilizing a single on/off switch activation mechanism such as a mouse click is old and well known in the art. It would have been obvious to a person having ordinary skill in the art to change the right click programming to include on/off capability, because this would improve the system of Sherr by turning off a program that was activated with the right click and removing information that was not currently needed thus creating a less cluttered webpage.

In response to claim 16, Sherr teaches wherein the shopping summary is included in a second web page (see response to claim 1, order page).

In response to claim 17, Sherr teaches wherein the shopping summary is included in an overlay upon the electronic commerce web page (see response to claim 1,3, and 5).

In response to claims 18-21, Sherr teaches displaying an order page initiated by a right mouse click (page 7, para 071), but does not specifically mention showing all the different summaries in response to detecting the right click. It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Sherr, displaying summaries as claimed in the instant invention, because this would permit buyers of the system to use the right click option for any presentation of information that was considered important enough to command the use of the right click option. Offering this flexibility would increase the sale and use of the system and thus create increased revenue by satisfying the needs of the customer.

In regards to claim 1 and applicant requests that the examiner provide an evidentiary article to support his contention of official notice. In response, the examiner presents the helpcommunity article that teaches programmers how to program the right click button to add any functionality. It is noted that the examiner considers the many different results of the manipulative step of right clicking (i.e. bidding summaries, shopping carts, overlays ect.) to be non-functional language and therefore these resultant effects are given little patentable weight because they do not perform a manipulative step. Sherr teaches in paragraphs 71,85 and 95 that the use of the right click can open an order screen or a display. As is contemplated by Sherr, a plurality of programmed displays may be adapted to be presented by the right click button of mouse without changing the manipulative step of pressing the right click button.

In regards to claim 15, applicant argues that the examiner does not treat the feature, "when the right click is detected, determining whether a shopping summary is shown". As noted above the item detected (an open shopping cart) is considered by the examiner to be non-functional language, because no manipulative step is provided by the shopping cart and could just as well have been any other displayed item being turned off or on, therefore the turning on and off of the specific display of the shopping cart is irrelevant. Furthermore, the examiner disagrees that the step of determining was not addressed. The examiner contends that a reasonable person of ordinary skill in the art would conclude that in order for a program to be turned off by the click of a button, the active program would need to be recognized. In regards to applicant's request for a citing were a right mouse click is used to turn a display on and off, the examiner provides Langlois et al (6,018,571) and directs the applicant's attention to col 8, line 60 – col 9, line 4).

(12) Response to Argument

Claims 1-3:

In regards to claim 1, and applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce

the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner has stated reasoning from knowledge generally available to one of ordinary skill in the art.

The examiner, however, further clarifies Sherr's motivation by providing the following statements from Sherr.

- "...and a right click which may be used to enter an "order" page to rent the movie (either directly or through a pop-up menu)." (para 0071)
- "A user may interact with the display representations of content items presented on the Browse page in the same way as content item representations on the home page, for example, by selecting a content item (for example, movie) with a left or right click to view more information or purchase or obtain a license to access the selected content item, respectively." (para 0085)

It is clear from the passages that Sherr intended the use of the "right click" option for a plurality of displays. Further, Sherr does present reasons for modification such as in paragraph 7: "The success of a content service on the Internet may depend, at least in part, on the ease by which a user may select and access content. Services that provide websites having formats or displays that are unfamiliar or complicated to typical users may have difficulty in attracting a sufficient number of users to the website and

generating repeat users. Thus, there is a demand for user interfaces, such as websites, which are easy to operate and provide familiar or recognizable formats." (para 007)

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The examiner further directs the appellant's attention to the reasons cited above in the motivation discussion.

In regards to claim 2, appellant argues that the examiner has not addressed claim 2, and the limitation "wherein the act of showing further comprises the act of accessing a second web page that includes the shopping summary". The examiner disagrees and directs the appellant's attention to Sherr, para 0091, which defines a focused page that includes an order page as a separate webpage. "A focused page (such as a movie page) is a web page serving as an access point to information, such as promotional material, facilities for ordering memorabilia, educational information or other information about or related to a particular content item (for example, a particular movie, such as a "Stuart Little" movie page dedicated to information relating to the

movie, "Stuart Little") or set of content items (for example a set of movies, including, but not limited to a series of related movies)." Therefore, Sherr teaches the limitation found in claim 2.

In regards to claim 3, appellant argues that Sherr does not teach the act of opening a web page overlay that includes the shopping summary and that the cited figure does not portray this feature. The examiner disagrees and further clarifies the figure cited by directing the appellant to paragraph 0066 of Sherr, which clearly teaches using the steaming box 206 for opening another web page including entering into a transaction see also remarks above concerning motivation.

Claims 4-6:

In regards to claim 4, appellant argues that the open order ticket page is not a "shopping cart". It is noted that the examiner considers the many different results of the manipulative step of right clicking (i.e. bidding summaries, shopping carts, overlays ect.) to be non-functional language and therefore these resultant effects are given little patentable weight because they do not perform a manipulative step. However, Sherr teaches in paragraphs 0071,0085 and 0095 that the use of the right click can open an order screen or a display. As is contemplated by Sherr, a plurality or programmed displays may be adapted to be presented by the right click button of the mouse without changing the manipulative step of pressing the right click button. Furthermore, the

appellant has defined a shopping cart as "comprising a list of goods to be purchased", therefore, by definition this is also a "shopping summary" and was previously addressed in claim 1.

In regards to appellant's arguments concerning claim 5, the examiner disagrees and directs the appellant's attention to the response to claim 4.

In regards to appellant's arguments concerning claim 6, the examiner disagrees and directs the appellant's attention to the response to claim 4.

Claims 7-9:

In regards to claim 7, appellant argues that the examiner has not provided a reference that shows the right click being used to show a "bidding summary". The examiner disagrees and notes that as stated in response to claim 4, the examiner considers the many different results of the manipulative step of right clicking (i.e. bidding summaries, shopping carts, overlays etc.) to be non-functional language and therefore these resultant effects are given little patentable weight because they do not perform a manipulative step. Sherr teaches in paragraphs 0071,0085 and 0095 that the use of the right click can open an order screen or a display. As is contemplated by Sherr, a plurality or programmed displays may be adapted to be presented by the right click button of the mouse without changing the manipulative step of pressing the right click

button. The examiner also provided as evidentiary support the "help community web page" that shows programmers how to program the right click option actuation of any number of information displays. Since the use of the right click was widely known to one of ordinary skill in the art at the time of the invention to present any type of display, the examiner does not consider any particular one of the infinite number of displays that could be displayed as carrying any particular patentable weight Furthermore, appellant has not disclosed that limiting the invention to the use of only those stated displays of the instant claims solves any particular problem or is for any particular purpose and it appears that the invention would perform equally well with any type of displayed information. In response to the other arguments the examiner refers the appellant to the previous discussion in claims 1-6.

In regards to appellant's arguments concerning claims 8 and 9 the examiner refers to appellant to the response to claims 2 and 3 above.

Claims 10-14:

In regards to claim 10, appellant argues that Sherr does not teach locating a site with a mouse and activating another window at the derived location. The examiner disagrees and directs the appellant's attention to cited para 0067 that locates the cursor (activated by a mouse) placed on an image and activates the image. The examiner further directs the appellant's attention to para 0066 where a selected location defined by a selected area presents another active webpage in the activated location. The

examiner also notes that it was notoriously well known to activate a window (such as a pull down menu, see pop up menu para 0071) in a location designated by a mouse and activated by a click of the mouse. In regards to the remaining arguments the examiner directs the appellant's attention to the response to claims 1-9 above.

In response to appellant's arguments concerning claims 11-14, the examiner directs appellant's attention to the response to claims 7-9 above.

Claims 15-21

In regards to claim 15, applicant argues that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner has stated reasoning from knowledge generally available to one of ordinary skill in the art.

The examiner, however, further clarifies Sherr's motivation by providing the following statements from Sherr.

- "...and a right click which may be used to enter an "order" page to rent the movie (either directly or through a pop-up menu)." (para 0071)

- “A user may interact with the display representations of content items presented on the Browse page in the same way as content item representations on the home page, for example, by selecting a content item (for example, movie) with a left or right click to view more information or purchase or obtain a license to access the selected content item, respectively.” (para 0085)

It is clear from the passages that Sherr intended the use of the “right click” option for a plurality of displays. Further, Sherr does present reasons for modification such as in paragraph 7: “The success of a content service on the Internet may depend, at least in part, on the ease by which a user may select and access content. Services that provide websites having formats or displays that are unfamiliar or complicated to typical users may have difficulty in attracting a sufficient number of users to the website and generating repeat users. Thus, there is a demand for user interfaces, such as websites, which are easy to operate and provide familiar or recognizable formats.” (007). Sherr would be further motivated to turn off the image once activated because viewing box 206 would need to be available should another image or action be selected.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was

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within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The examiner further directs the appellant's attention to the reasons cited above in the motivation discussion.

In regards to appellant's arguments concerning claims 16 and 17, the examiner directs the appellant's attention to claims 2-4.

In regards to appellant's arguments concerning claims 18-21, the examiner directs the appellant's attention to claims 7-9.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Mark Fadok
Primary Examiner

November 15, 2005

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